

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF PUERTO RICO**

IN THE MATTER OF:

Rafael Mojica Fontanez

America Nuñez Acosta

Debtors

CASE NO: 09-05099 SEK

CHAPTER 13

**ANSWER TO MOTION SEEKING ORDER CONFIRMING
AUTOMATIC STAY IS NOT EFFECT**

TO THE HONORABLE COURT:

COMES NOW, debtor(s) through the undersigned attorney and to this Honorable Court respectfully states, alleges and prays as follows:

1. That creditor Miguel Colon hereinafter referred to as "Creditor" filed motion titled "Motion Seeking Order Confirming Automatic Stay Is Not Effect" dated November 9, 2009 .
2. Debtor accepts factual allegation 1 ,2 3, 11 12 ,13, 14, 1 16 , 17 , 18 ,
3. Debtor does not answer allegations 19 , 20 , 21 and 22 in view that it is a conclusion or cite of law .
4. Debtor denies allegations 4 , 5 , 6 . 7 . 8 9.10 due to lack of information , creditor indicates that he is the holder of four mortgage notes to the bearer guaranteed by mortgage deeds that encumbers property of the estate . Creditor does not provide any evidence that he is in possession of mortgage notes to bearer or that an executed pledge agreement was executed in regard to each note .
5. Debtor has the following affirmative defenses :

A- Lack of standing . Movant must prove that he is in possession of the four mortgage notes to bearer that he describes in his motion .

B- Court does not have jurisdiction to adjudicate creditors request . Creditors should have filed an adversary proceeding to request that stay pursuant to section 362 (d) against property of the estate be lifted or modified . Even thou the title and factual facts allegations of creditors motion leads to indicate that creditor is requesting a determination that stay pursuant section 363 (c) (3) (b) be terminated ; creditors prayer request is that the stay pursuant to section 362 (d) be terminated in order to pursue collection efforts against property of the estate in local court . Stay pursuant to section 362 (c) (3) (A) terminates the automatic stay with regard to the debtor and property of the debtor , however , it does not terminate the automatic stay in regards to property of the estate. In re Veronica T Jump vs. Chase Home Finance , LLC , BAP NO. 06-131 December 28, 2006 .

WHEREFORE, debtors request very respectfully of this Honorable Court to deny the above mentioned motion filed by creditor requesting that he be allowed to continue proceedings in local court against property of the estate .

WE CERTIFY, that on this same date and by regular U.S. Mail, copy of this motion has been served to the Standing Chapter 13 Trustee Alejandro Oliveras Rivera , Esq., Chapter 13 Trustee and sister counsel Elbia I . Vazquez Davila , movants legal representative using the CM/ECF System .

Respectfully Submitted.

In San Juan, Puerto Rico this January 21, 2010.

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